ENGLISH LEGAL LEGISLATION IN 1893.

ENGLISH legislation in 1893 has been somewhat scanty, so far as the interests of lawyers are concerned. The reasons for this fortunately do not fall within the scope of this paper, which simply purports to be a brief review of what has been effected.

The first statute that demands notice is cap. 7, The Customs and Inland Revenue Act, 1893. This increases the *6d.* duty on contract notes to a shilling, and abolishes the "delivery duty" on marketable securities transferable by delivery. Under the Stamp Act, 1891, a duty of 1*s.* per £100 was charged on the first delivery of such securities in any year, but the payment of this duty was found so exceedingly inconvenient in practice that its abolition will be generally welcomed.

Passing on to cap. 21, The Voluntary Conveyances Act, 1893, an enactment is found declaring that no voluntary conveyance of lands, whether made before or after the passing of the act, if in fact made *bonâ fidè* and without any fraudulent intent, shall hereafter be deemed fraudulent or covinous within the meaning of the Act, 27 Eliz. c. 4, by reason of any subsequent purchase for value, or be defeated under any such purchase. There is, however, an express exception of any of the provisions of the said Act by a conveyance made upon cases where the author of a voluntary conveyance has, before the passing of the Act, made a disposition in favor of a purchaser for value. It will be remembered that the Act, 27 Eliz. c. 4, was really directed against fraudulent, feigned, and covinous conveyances, but the ingenuity of the judicial bench succeeded in holding that the mere fact of a subsequent sale for value by the original vendor was in itself sufficient evidence of fraud in the previous conveyance to avoid it within the Act. For some time at least, students and practitioners will still have to refer to the decisions on the Act of Elizabeth, which are conveniently collected in the notes to Ellison *v.* Ellison, 1 W. & T. 334 to 342, 6th ed. The former danger in conveyancing was that the voluntary settlement which the purchaser for value proposed to ignore or defeat had really been rendered valid by a subsequent valuable consideration. The present danger, if any, will arise from the suppression of voluntary conveyances. It is said that a volunteer, unlike a purchaser, does not, and indeed

cannot very well insist on the delivery of the deeds, and his grantor, if so minded, can purport to make a subsequent conveyance of the same property, suppressing the voluntary conveyance. This is a danger which no amount of care in the investigation of the title can be trusted to avoid, and the only remedy would seem to be the compulsory registration of all voluntary conveyances.

The next statute, cap. 22, The Appeal (*Formâ Pauperis*) Act, 1895, will put a stop to many pauper appeals to the House of Lords. An incidental petition for leave to sue *in formâ pauperis* is necessary under the present practice, and the present Act provides that if the House, on the report of its appeal committee, determines that there is no *primâ facie* case for the appeal, the House may refuse the prayer of the petition for leave to sue. This will nip many such appeals in the bud. As a pauper has everything to gain and nothing to lose by appealing, and will therefore naturally appeal however hopeless his case, the new check ought to prove highly beneficial.

Cap. 30. The Friendly Societies Act, 1893, is intended to protect sect. 22 of the Friendly Societies Act, 1875, from the operation of the Arbitration Act, 1889. Friendly Society disputes are settled in the manner provided by sect. 22 aforesaid, and the present Act provides that the court or person to whom the dispute is referred shall not be compelled to state a special case on any question of law arising in the case, but may do so on request of either party, the object being as far as possible to leave the Friendly Society forum untouched.

Cap. 32. The Barbed Wire Act, 1893, provides a summary procedure for the removal of barbed wire fencing where it is a nuisance to a highway. Judging from the extract from Mr. La Monte's paper on the subject in the New Jersey Law Review (see 95 L. T. 419), this subject has received a considerable amount of attention in the American courts, and the Act is therefore noticed here.

Cap. 39. The Industrial and Provident Societies Act, 1893, is scarcely of sufficient general interest to be analyzed. The effect, shortly, is to re-enact and amend the Industrial and Provident Societies Act, 1876. As in the case of Friendly Societies, the forum appointed by the Act for the settlement of disputes (sect. 49) is not bound under the Arbitration Act, 1889, to state a special case on any question of law, but may do so at the request of either party.

Cap. 53. The Trustee Act, 1893, consolidates the provisions

of various enactments relating to trustees. A reference to the schedule to the Act will show among what a multitude of Acts these provisions have hitherto lain scattered. The old law has, however, been well understood, and for some time at least difficulties may arise from the difference of wording between the old and new provisions. It will be noticed that sect. 1 incorporates the decision of Hume *v.* Lopes, 1892, App. Cas. 112, deciding that "trust funds in his hands," in the Trust Investment Act, 1889, included all trust funds in the trustee's hands whether at the time in a state of investment or not. Sect. 21 extends sect. 37 of the Conveyancing Act, 1881, to administrators providing that "An executor *or administrator* may pay or allow any debt or claim on any evidence that he thinks sufficient." It was considered, by analogy to *Re* Clay & Tetley, 16 Ch. D. 3, that the former section did not apply to administrators. On the other hand, sect. 22, allowing the survivors of two or more trustees to execute a power, seems narrower than sect. 38 of the Conveyancing Act, which applied to two or more *executors or* trustees. This point, however, is probably met by sect. 50, which makes the word "trust" include the duties incident to the office of personal representative of a deceased person. The Act was intended to be a mere Consolidation Act, and on the whole it has apparently made no appreciable change in the law.

Cap. 57. The Law of Commons Amendment Act, 1893, renders the consent of the Board of Agriculture necessary before any inclosure or approvement of any part of a common can be made under the Statute of Merton, 20 Hen. 3, c. 4, or the Statute of Westminster, the second, 13 Ed. 1, St. 1, c. 46. It will be remembered that under these statutes, which were only declaratory of the common law, the lord of a manor could inclose part of a common of pasture, provided he left sufficient for the commoners, the onus of proving such sufficiency being on the lord. This right of approvement was confined to common of pasture. In giving or withholding their consent to the inclosure, the Board are to have regard to the same considerations and, if necessary, hold the same inquiries, as on an application for inclosure under the Commons Act, 1876. The latter Act provides for the fullest consideration of and inquiries as to the benefit of the neighborhood and the protection of private interests, including the commoners' rights, and the present Act will no doubt render almost impossible quiet inclosures by wealthy lords against poor commoners, who dare not and cannot afford to resist.

Cap. 58. The Companies (Winding-up) Act, 1893, merely enacts that an order for payment of money made by the court, under the Companies (Winding-up) Act, 1890, sect. 10, shall be deemed to be a final judgment within the meaning of the Bankruptcy Act, 1883, sect. 4 (1) (g). The Companies (Winding-up) Act, 1890, sect. 10, gave the court power to order delinquent directors, officers, or promoters to repay any moneys or restore any property misapplied or retained by them, or contribute a sum of money to the assets by way of compensation. The order is made on the application of the official receiver or liquidator, or of any creditor or contributory, and, if it is not obeyed, a bankruptcy notice may now be served on the defaulter, requiring him to obey the order. Non-compliance with the terms of this notice, within seven days after service, constitutes an act of bankruptcy.

Cap. 63. The Married Women's Property Act, 1893, amends the Married Women's Property Act, 1882, in several important particulars. A creditor suing a married woman on a contract, under the Act of 1882, had to allege and prove that she was possessed of separate estate at the time of making the contract. Palliser *v.* Gurney, 19 Q. B. D. 519; Tetley *v.* Griffith, 57 L. T. 673. Under sect. 1 (*a*), this difficulty, which often worked great injustice in practice, is removed. Sect. 1 (*b*) makes no alteration, and, as before, the contract once binding will bind after-acquired separate property. Separate property, however, did not include property acquired during widowhood (Pelton *v.* Harrison, 1891, 2 Q. B. 426), and, therefore, sect. 1 (*c*) provides that the contract shall be enforceable against such property. As before, the contract cannot be enforced against property subject to a restraint on anticipation. Costs, however, may now be ordered, under sect. 2, to be paid out of such property, in the case of an action instituted by a married woman, or by a next friend on her behalf. This alters the law as laid down in Cox *v.* Bennett, 1891, 1 Ch. 617, and *Re* Glanvill, 31 Ch. D. 522. Sect. 3 provides that sect. 24 of the Wills Act, 1837 (making a will speak from the testator's death with reference to the property comprised therein) shall apply to the will of a married woman made during coverture, whether she is or is not possessed of or entitled to any separate property at the time of making it, and such will shall not require to be re-executed or republished after the death of her husband. Hitherto such a will passed separate estate even where the married woman had none at the date

of the will (Charlemont *v.* Spencer, 11 L. R. Ir. 490; *Re* Bowen, 1892, 2 Ch. 291), but it did not without re-execution pass property acquired after the death of her husband. See Willock *v.* Noble, L. R. 7 H. L. 580; *Re* Price, 28 Ch. D. 709, and the notes to sect. 8 of the Wills Act, in Shelford's Real Property Statutes, 9th ed., by T. H. Carson, Esq.

The New Rules of November, 1893, may be shortly noticed. Order XI., as to service out of the jurisdiction, was extended to torts, originating summonses, notices of motion in patent cases, summonses, orders, and notices in winding up companies, and petitions for administration, execution of trusts, or for orders dealing with funds in court. This order has been annulled by the Rule Committee to give the Scotch members an opportunity of considering it. In the summary procedure under Order XIV., a judge giving leave to defend may order the action to be set down for trial at once, and a special list is to be kept of cases in which such judge thinks a prolonged trial will not be requisite, the judge being empowered to order any cause to be put into that list. In practice leave to defend is always given where there is any probability of a real defence. Trustees may now represent beneficiaries in foreclosure actions. Powers are given to approve a compromise in the absence of some of the parties interested, and to appoint a person to represent absent heirs, next of kin, or members of a class. A plaintiff may proceed to trial without pleadings if he endorses his claim sufficiently on his writ, and states his intention of proceeding without pleadings.

The defendant may, however, apply for a statement of claim or particulars. If the trial proceeds without pleadings, all defences are open to the defendant, but he must give notice if he intends to rely on a set-off or counterclaim, or on the defence of infancy, coverture, fraud, statute of limitations, or discharge under the Bankruptcy Acts. The fact that money has been paid into court is not to be communicated to the jury or taken into account by them in finding the amount of the debt or damages. There are to be no interrogatories (even in cases of fraud or breach of trust) without the leave of the judge to whom the proposed interrogatories must be submitted. Discovery or inspection of documents is not to be ordered if not necessary to fairly dispose of the cause or matter, or to save costs. Verified copies instead of originals may be ordered to be inspected. The whole order as to discovery is now to apply

to infant plaintiffs and defendants, and to their next friends and guardians *ad litem.* Undue delay in proceedings is to be checked by the Chief Clerk, whose duty is to report it to the judge. Costs of an unsuccessful claim or resistance to any claim to any property are not to be paid out of the estate unless the judge so directs, and the costs of ascertaining the person entitled to any legacy, money, or share, are *primâ facie* to be paid out of such share, *i.e.*, not out of the whole estate. Probably if the difficulty arose simply from the language of a testator, costs would be allowed out of the general estate; but it is yet too early for a judicial decision on the point. Where some of the persons entitled to shares are ascertained, their shares may be paid at once without reserving any part to answer the costs of ascertaining the persons entitled to the remaining shares. Lastly, the time for appealing is reduced, in the case of interlocutory orders, or final or interlocutory orders in any matter not being an action from twenty-one to fourteen days, and in other cases from one year to three months. Speed, cheapness, and finality seem to be the chief objects aimed at, but time alone can show how far these objects have been attained.

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